

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND GERRI SUE SMITH

Come now Gerri Sue Smith ("Licensee") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a salesperson will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Commission at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the documents relied upon by the Commission in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Commission believes were violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that Licensee's license, numbered 2006033157 is subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, Gerri Sue Smith, holds an active salesperson license from the Commission, license number 2006033157. The Commission issued Licensee's license on August 30, 2006. Licensee's license expires September 30, 2018. Licensee's license was not current and active at all times relevant herein. On or about October 4, 2012, Licensee placed her license on inactive status. On April 6, 2017, Licensee reactivated her license.

3. On or about April 6, 2017, the Commission received Licensee's application to reactivate her salesperson license. On her reactivation application, Section 1B, question A, Smith was asked if she had "been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution in this state, or any other state, or of the United States, whether or not sentence was imposed? **NOTE: This includes Suspended Imposition of Sentence, Suspended Execution of Sentence, misdemeanor and felony convictions and alcohol related offenses, i.e. DWI and BAC.**" Smith responded "YES" to Section 1B, question A.

4. The Commission's investigation revealed that:

- a. On March 29, 2017, Smith pled guilty in the Circuit Court of Jackson County, Missouri, case number 1616-CR01095-01, to the class C felony of Stealing Leased or Rented Property. The Court suspended the imposition of sentence and placed Smith on three years' supervised probation.
- b. On March 10, 2017, in the District Court of Wyandotte County, Kansas, case number 2015-CR0700, Smith pled guilty to two counts of the Security Level 10, Non-Person felony of Attempted Criminal Damage to Property. The Court suspended the imposition of sentence and placed Smith on one year of probation.

5. Section 339.040.1, RSMo, states, in relevant part:

1. Licenses shall be granted only to persons who present, and corporations, associations, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or broker salesperson in such a manner as to safeguard the interest of the public.

6. Licensee's conduct, as described in paragraphs 3 through 4 above, constitutes cause to discipline Licensee's license pursuant to § 339.100.2(16), (18) and (19), RSMo.

7. Cause exists for the Commission to take disciplinary action against Licensee's license under § 339.100.2(16), (18) and (19), RSMo, which states in pertinent part:

2. The Commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

...

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence [.]

Joint Agreed Disciplinary Order

8. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

9. The terms of discipline shall include that **Licensee's license shall be on probation for four (4) years.** Smith's real estate salesperson license is hereby placed on PROBATION for FOUR (4) YEARS. During the period of probation on her real estate salesperson license, Smith shall be entitled to practice as a real estate salesperson provided she adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

10. **Terms and conditions of the disciplinary period.** Terms and conditions of the disciplinary period are as follows:

- a. Smith shall obey and comply with the terms and conditions of probation for her criminal supervision. Smith shall prepare and quarterly written reports to the MREC regarding the status of and compliance with her criminal probation, parole, and/or release, as well as the terms and conditions of this Settlement Agreement. Smith is responsible for ensuring that such quarterly reports are received by the MREC on or before January 10, April 10, July 10, and October 10 during each year of the disciplinary period. Smith shall submit the first such report regarding compliance with the terms of her criminal probation and compliance with this Settlement Agreement so that the MREC receives it on or before April 10, 2019, and the last such report shall be due no later than April 10, 2022.
- b. If at any time during the disciplinary period Smith wishes to transfer her license affiliation to a new broker/brokerage, she must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer her license. Smith must obtain the Broker Acknowledgement form from the MREC.
- c. Smith shall keep the MREC apprised at all times in writing of her current address and telephone number at each place of residence and business. Smith shall notify the MREC in writing within ten days of any change in this information.
- d. Smith shall timely renew her Missouri real estate salesperson license, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain her license in a current and active state. During the disciplinary period, Smith shall not place her license on inactive

status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Smith may surrender her real estate license by submitting a letter to the MREC. If Smith applies for a real estate license after surrender, Smith shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

e. Smith shall meet in person with the MREC or its representative at any such time and place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

f. Smith shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

g. During the probationary period, Smith shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.

h. Smith shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

i. Smith shall report to the MREC each occurrence of Smith's being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

11. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

12. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

13. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

14. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

15. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

16. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

17. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of Licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:
Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

18. If Licensee has requested review, Licensee and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing

Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensee as allowed by law. If the Licensee does not submit the agreement to the Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEE


Gerri Sue Smith

Date 12-19-2018

COMMISSION


Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date 01-03-19